



RECEIVED
TOWN OF BROOKLINE
REGISTRARS OF VOTERS

16 JUL 21 AM 11:55

Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 2016-0039
OWNER: BOSTON UNIVERSITY

Boston University (the "Petitioner") applied to the Building Commissioner for permission to construct a new theater and associated educational facilities totaling approximately 75,000 SF and accessory parking located on a 154,989 square foot parcel of land between Commonwealth Avenue and Dummer Street (the "Property"), on which is located an existing building at 808 Commonwealth Avenue. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board and fixed June 23, 2016 at 7:15 p.m. in the Selectmen's Hearing Room, 6th Floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published June 9th and 16th, 2016 in the *Brookline Tab*, a newspaper published in Brookline. Copy of said notice is as follows:

Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

808 COMMONWEALTH AVE – CONSTRUCT A 75,000 SQUARE FOOT THEATER BUILDING AND ACCESSORY PARKING, in a G-2.0, General Business, zoning district, on June 23, 2016, at 7:15 PM the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: BOSTON UNIVERSITY) *Precinct 1*

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

1. **Section 5.08.2: Exceptions to Dimensional Requirements For Uses 9 & 10**
2. **Section 5.09.2.h: Design Review**
3. **Section 5.31.1: Exceptions to Maximum Height Regulations**
4. **Section 5.43: Exceptions to Yard and Setback Regulations**
5. **Section 5.70: Rear Yard Requirements**
6. **Section 6.02, Paragraph 1: Table of Off-Street Parking Requirements**
7. **Section 6.02.4.c: Off-Street Parking Regulations**
8. **Section 6.06: Table of Off-Street Loading Requirements**
9. **Section 6.06.7: Off-Street Loading Regulations**
10. **M.G.L. 40A § 3**
11. **Modification, as necessary, of BOA decision 2531, May 6, 1982**
12. **Any Additional Relief the Board May Find Necessary**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

Publish: June 9, 2016 & June 16, 2016

On 23 June 2016 at the time and place specified in the notice a public hearing was held by this Board. Present at the hearing were Associate Board Member Mark G. Zuroff, acting as Chairman, Board Member Christopher Hussey and Associate Board Members Johanna Schneider. In response to the Chairman's inquiry, the Petitioner waived reading of the legal notice. The Chairman outlined the order to be followed in the proceeding.

Walt Meissner, Associate Vice President for Operations, Boston University ("BU"), introduced the Project Team, explained the reasons for the location of a new facility for Theater Arts at the Property which is at the center of the BU's Charles River campus, and introduced the Petitioner's presentation.

Petitioner's attorney, Marilyn L. Sticklor of Goulston & Storrs PC, then presented the Petitioner's proposal and reviewed the compliance with all requirements for the grant of special permit relief and the specific zoning relief requested for the Project.

Ms. Sticklor explained that the Property is located in Brookline's G-2.0 (General Business) Zoning District, and constitutes the aggregate of so-called Assessors Lots 1, 2, 6 and 7 on Block 17, Atlas Page 4 which together constitute the zoning Lot for the Project, and that the Property is located adjacent to a Single Residence S-7 District across Dummer Street.

In describing the existing conditions, Ms. Sticklor explained that the Property is currently improved by an approximately 212,757 square foot building at 808 Commonwealth Avenue, containing 87 parking spaces (the "Existing Building") and 218 surface parking spaces, for a total of 305 existing parking spaces. The Existing Building was originally constructed under a building permit issued in 1927 as a Cadillac Automobile Showroom, and has been used for educational purposes since acquisition of the Existing Building by Boston University in 1979. The Property was the subject of Board of Appeals Decision No. 2531, dated June 22, 1982, approving a parking

lot for 143 vehicles on Assessors Lots 2, 6 and 7 in support of the Existing Building on Assessors Lot 1, as modified by Decision No. 2531A, dated May 5, 1983.

Ms. Sticklor indicated that the Petitioner is proposing a new building (the “**New Building**”) consisting of new theater and associated educational facilities totaling approximately 75,000 SF. After construction of the New Building, the Property will contain approximately 287,757 SF (consisting of approximately 212,757 SF within the Existing Building and of approximately 75,000 SF within the New Building), and will provide approximately 286 parking spaces (consisting of about 104 surface spaces, about 106 spaces within the New Building and about 76 existing spaces remaining within the Existing Building) and 2 loading bays serving the New Building (collectively, the “**Project**”).

Ms. Sticklor noted that the Zoning By-Law of the Town of Brookline (the “**Zoning By-Law**”) contains a number of provisions that modify requirements generally applicable and authorize zoning relief through special permits for an educational use consistent with the Dover Amendment. Specifically, Section 5.08(1) provides that for an educational use the FAR is increased by 1% for each 2,000 SF or lot size above the lot size minimum up to 65%, and Section 5.08(2) and 6.02(4)(c) provide that special permits may be issued modifying dimensional matters and parking requirements to the extent necessary to allow reasonable development of the educational use in general harmony with other uses permitted and regulated in the vicinity.

With respect to use and dimensional requirements, Ms. Sticklor indicated that the Project complies with requirements of the Zoning By-Law, as follows: (i) educational and accessory parking uses are allowed in the G-2.0 Zoning District; (ii) the required floor area ratio under Section 5.08(1) is 3.3 since there is no minimum lot size in the G-2.0 Zoning District so that the allow floor area ratio of 2.0 is increased by 65% to 3.3, and the actual floor area ratio will be approximately

1.86; (iii) no front yard is required, and all side yards which border a street are treated as front yards, so that there are no yard requirements along Commonwealth Avenue, Dummer Street or Essex Street.

Ms. Sticklor then reviewed the sections of the Zoning By-Law under which relief is being sought:

Section 5.09—Design Review: A project which fronts on or is within 100 feet of Commonwealth Avenue or which has more than 10,000 SF of Gross Floor Area or 20 or more parking spaces is subject to the requirements of Section 5.09 of the Zoning By-Law. *Petitioner has submitted an Impact Statement that addresses community and environmental standards.*

Section 5.08(2)—Exceptions for Dimensional Requirements for Uses 9 & 10: The Board of Appeals may by special permit modify dimensional requirements for an educational use to the extent necessary to allow reasonable development of such use in general harmony with other uses permitted and as regulated in the vicinity. *Special permits are required for: (i) modification of height regulations to permit a height of up to 59' for the New Building (rather than 45' permitted as of right); (ii) rooftop structures that exceed the applicable height limit by more than 10 feet for an educational use to permit an elevator penthouse which will exceed the 59' height limit by 11'6" (also available under Section 5.31(1)); and (iii) to modify Yard Regulations regarding Rear Yard to permit a rear yard setback of 17.75 feet rather than 29.7 feet as required (also available under Section 5.43).*

Section 5.31(1)—Exceptions to Maximum Height Regulations: A special permit also may be granted for substantial rooftop structures exceeding the maximum height limit by more than 10 feet. *As noted above, an elevator penthouse which will exceed the 59' height limit by 11'6".*

Section 5.43—Exceptions to Yard and Setback Regulations: A special permit also may be granted substituting other dimensional requirements for specified yard and setback requirements as will assure the same standard of amenity to nearby properties. *As noted above, the rear yard bordering 830-846 Commonwealth Avenue will be 17.75 feet rather than 29.7 feet.*

Section 6.02(4)(c)—Off-Street Parking Space Regulations: A special permit may be granted modifying the parking requirements for an educational use to the extent necessary to allow reasonable development of such use in general harmony with other uses permitted and as regulated in the vicinity. *A special permit is required to reduce the parking requirement to 286 spaces (rather than 523 spaces) computed at 1 space per 550 SF GFA.*

Section 6.06(7)—Off-Street Loading Regulations: A special permit may be granted reducing the number of loading bays where the adequacy can be demonstrated based on the proposed uses, hours of operation, delivery service requirements, and allocation of loading facilities across the various uses and buildings. *A special permit is required to reduce the number of required loading bays to 2 loading bays (instead of 4 loading bays if the Existing Building and the New Building are*

considered in the aggregate or instead of 6 loading bays if the Existing Building and the New Building are considered separately).

Footnote 12 to Table 5.01—Table of Dimensional Requirements. This Footnote contains set-back requirements referencing land in the G-2.0 District which abuts a public street opposite land in the S District. *The Petitioner request a finding that this Footnote is of no force and effect as related to the Project since such Footnote is not referenced in the Table of Dimensional Requirements itself.*

A presentation was then made by Howard Elkus of Elkus Manfredi, the Project architect, who provided an overview of the Project's site planning and building architecture. Using visual aids, including elevations and site plans, Mr. Elkus reviewed the Project's scale, massing, materials, site plan and vehicular and pedestrian circulation. Mr. Elkus explained that the taller portions of the building would be located closer to Commonwealth Avenue with the lower portions of the building closest to Dummer Street. Mr. Elkus also explained that the Project would provide landscaped buffers and setbacks from the abutting residential district.

Mikyong Kim of Mikyoung Kim Design, the Project's landscape architect, then described the Property and the Project's landscaping design. Ms. Kim explained that the site will have two different characters, an urban character along Commonwealth Avenue and a residential character along Dummer Street. Using visual aids, Ms. Kim presented the Project's landscape elements, including the landscaped site plan, paths and movements through the Site, open spaces, plaza spaces and gardens. Ms. Kim concluded by describing the proposed trees and plantings within the landscaped buffer along Dummer Street and the plantings within the open plaza along Commonwealth Avenue.

Giles Ham, traffic engineer from Vanasse and Associates, then discussed the Project's traffic impacts and vehicular circulation. Mr. Ham explained that the Petitioner met with the Town Director of Traffic and Engineering and conducted a comprehensive study of the existing traffic conditions. Mr. Ham provided an overview of the intersections studied and the methodology

employed, including an analysis of the existing conditions. Using visual aids, Mr. Ham reviewed the proposed vehicular routes to and from the Project. In particular, that the existing driveway on Commonwealth Avenue will be closed and that all vehicular traffic will enter the Project on Essex Street and exit onto Dummer Street. Based on Mr. Ham's analysis, the Project will not have a material impact on vehicular, bicycle or pedestrian traffic.

Finally, Mr. Ham then described the Project's transportation demand management practices, which will include the following measures: utilization of the BU shuttle system, connectivity to the sidewalk and bicycle network, proximity to public transportation, interior/exterior bicycle parking, scheduling of theatre events outside commuter hours, posting of MBTA schedules on-site, designated spaces for carpoolers, electric car stations, "Zipcar" spaces and BU parking permits. Mr. Ham indicated that the approximately 286 parking spaces provided would be in excess of the number of parking spaces anticipated to be needed during peak parking demand.

Ms. Sticklor then summarized the manner in which the Project meets the requirements of **Section 9.05** for the issuance of a special permit: (a) The Property is an appropriate location for the use and structure. The Property is located in a general business zoning district in which the Project's education use is permitted as-of-right. The Project's dimensions are all permitted either as-of-right or by special permit and are compatible with neighboring uses along Commonwealth Avenue. The Project is located at the Center of BU's main campus across from the College of Fine Arts and is well-served by public transportation. Landscaped areas are provided along Essex and Dummer Streets, which are closest to the Single Residence District; (b) The Project will not adversely affect the neighborhood. The structures and uses will benefit the neighborhood by activating the streetscape along Commonwealth Avenue and by providing landscaped buffer areas along Essex and Dummer Streets as well as a landscaped plaza fronting on Commonwealth Avenue.

The lowest height is located in the portion of the Project closest to the S-7 (single family) zoning district. The Project's design has incorporated suggestions from the Design Advisory Team. The Project will not generate increased traffic due to its use by students who will generally either walk or take public transportation to the Project; (c) There will be no nuisance or serious hazard to vehicles or pedestrians. The Project will include adequate off-street parking, with a safe means of ingress and egress, so that the surrounding streets will be unaffected and unobstructed. Traffic impacts will be mitigated through a transportation demand management plan and construction impacts will be mitigated through a construction management plan. The Project will be operated to comply with state and local noise ordinances; (d) Adequate and proper facilities will be provided for proper operation of the Project. The Project will be provided with parking, sanitary, stormwater management, life-safety and other facilities of high quality in compliance with applicable building and health codes; and (e) The Project will not have a significant effect on the supply of housing available for low or moderate income people.

Ms. Sticklor then made the following comments as to the special permits requested:

Section 5.09--With respect to Design Review, Petitioner has submitted an Impact Statement that addresses community and environmental standards and the results of the Project's design review are reflected in the Planning Board report, which supports the Project. Specifically, as noted in the Project's Impact Statement, the Project's design incorporates each of **Section 5.09(4)**'s standards regarding the preservation of trees and landscape, the relation of buildings to the environment, relation of buildings to the form of the streetscape and neighborhood, open space, circulation, stormwater drainage, utility service, advertising features, safety and security, heritage, microclimate, energy efficiency and consideration of the "Commonwealth Avenue Design Guidelines."

Section 5.08(2) -- The modifications in dimensions are to the extent necessary to allow reasonable development of the educational use in general harmony with other uses permitted and regulated in the vicinity.

Section 5.43 -- The reduction in rear yard setback assures the same standard of amenity to nearby properties as measured by the increase in yard setbacks on Commonwealth Avenue (the landscaped plaza), Essex Street and Dummer Street that will counterbalance such a reduction and provide public benefits not otherwise required.

Section 6.02(4)(c) -- The reduction in parking requirement for educational use is to the extent necessary to allow reasonable development of the educational use in general harmony with other uses permitted and regulated in the vicinity. The Project's parking spaces will be operated as part of BU's parking and transportation system and will be available to BU students, faculty, staff and visitors/guests visiting the Project. Annual parking fees for faculty, staff and students are designed to discourage automobile usage; occupancy of the parking lots is monitored, restricting use to vehicles with parking stickers and authorized visitors. Additionally, the performances at the Project would typically occur outside of peak traffic and parking periods.

Section 6.06(7) -- The reduced number of loading bays is adequate based on the proposed uses, hours of operation, delivery service requirements and allocation of loading facilities across the various uses and buildings. Given nature of the educational use, the deliveries are very limited and the two bays will sufficiently accommodate the anticipated demand.

The Board acknowledged that letters or emails in support of the Project had been received from Brookline residents Lisa Wisel, Elizabeth Schlosberg, Roger Lipson, and Deborah Good Miller.

The following Brookline resident then spoke in opposition to the Project:

Cynthia Snow, chair of the Brookline Bicycle Advisory Committee, indicated that she was not speaking in opposition to the Project but rather in a neutral position. Ms. Snow appreciated that the Project is taking cyclists into consideration but noted that she is concerned that the increased traffic into the parking lot should be offset by mitigation outlined in the information she submitted to the Board.

Gillian Jackson of the Brookline Commission for the Arts and Betsy Frauenthal of the Brookline Music School indicated that they were very encouraged by BU's willingness to make the new facility available to the Brookline community but requested that BU work with them and the Town to finalize a plan with more specificity than the plan which had been provided to them prior to the hearing.

Polly Selkoe presented the findings of the Planning Board as contained in its report dated June 2, 2016, as well as proposed conditions recommended by the Planning Board, which are set out below. In response to the Chairman's inquiry, the Petitioner waived the reading of the proposed conditions. Ms. Selkoe indicated that the Planning Board supports this proposal to build a black box theatre and support facility to expand the educational opportunities for Boston University students, especially those in the Theatre Arts program. The design and massing of the proposed structures have been well-thought out with the taller theatre portion located closer to Commonwealth Avenue and the lower support building located along Dummer Street, opposite the residential neighborhood. The landscaped plaza in front of the theatre facing Commonwealth Avenue will provide welcome green space along a heavily travelled thoroughfare. Cars will enter the garage from Essex Street and exit onto Dummer Street, which will help spread out any traffic impacts to this area. Investigation into a bike path/track on Essex Street has been recommended with the objective of improving bicycle safety.

The buildings provide an appropriate transition from Commonwealth Avenue to the Cottage Farm neighborhood and should help block traffic noise from Commonwealth Avenue. If relief is granted, an appropriate amenity to the Town would be that Boston University agree to let local community and artist groups use the theater, when it is available.

Therefore, the Planning Board recommends approval of the site plan and architectural plans by Elkus/Manfredi, dated April 8, 2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, including the parking lay-out and location of all utilities, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations, including rooftop structures and screening, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping and fencing plan, subject to the review and approval of the Assistant Director of Regulatory Planning. The applicant shall also submit a plan for replacement of street trees on Dummer Street down to Amory Street, subject to the review and approval of the Tree Warden and the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, the applicant shall submit a final Construction Management Plan, including access and parking of construction vehicles, a dust and rodent control plan, waste disposal, and details regarding demolition, subject to the review and approval of the Building Commissioner and Director of Transportation and Engineering, with a copy to the Planning and Building Departments.
5. Prior to the issuance of a building permit, the applicant shall submit a final Transportation Demand Management Plan, subject to the review and approval of the Director of Transportation and Engineering, with a copy to the Planning and Building Departments.
6. Prior to the issuance of a building permit, the applicant shall submit a plan for a bike path or track on Essex Street as well as Dummer Street, if feasible, subject to the review and approval of the Director of Transportation and Engineering.
7. Prior to the issuance of a building permit, the applicant shall submit a final Drainage and Stormwater Plan, subject to the review and approval of the Director of Transportation and Engineering.
8. Prior to the issuance of a building permit, the applicant as an amenity to the Town, shall

submit a plan outlining a set of proposed community partnership initiatives for Brookline community and local artists groups to be able to use the theatre and support facility when it is available, subject to the approval of the Assistant Director of Planning.

9. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:
1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Yanovitch, Deputy Building Commissioner, spoke on behalf of the Building Department. Mr. Yanovitch stated that the Building Department has no issues with the Project. Mr. Yanovitch noted that work currently occurring on the Project site is related to the removal of a redundant fire pipe, not the proposed Project. Finally, Mr. Yanovitch expressed his appreciation for the Petitioner's willingness to subject the Project to the Town's process in lieu of exercising its rights under the so-called Dover amendment.

Ms. Sticklor, on behalf of Petitioner, responded to certain issues raised including Condition Numbers 5, 6 and 8 of the suggested Planning Board Conditions. With respect to Condition 5, Ms. Sticklor requested that the Board allow the Petitioner to satisfy the obligation prior to the issuance of a certificate of occupancy rather than issuance of a building permit. With respect to Condition 6, Ms. Sticklor requested (i) that the Board allow the Petitioner to satisfy the obligation prior to the issuance of a certificate of occupancy rather than issuance of a building permit and (ii) that the Board clarify that the Petitioner is not obligated to implement the improvements shown on the plan submitted to the Board. With respect to Condition 8, Ms. Sticklor requested (i) that the Board allow the Petitioner to satisfy the obligation prior to the issuance of a certificate of occupancy rather than issuance of a building permit and (ii) that the Board modify the condition to replace the phrase "to be able to use the theatre and support facility when it is available" with the phrase "including use of the theater and supporting facilities when it is not in use by the applicant, with the goal of making

such facilities available to the Brookline community and local artists groups on 5 to 6 days per calendar year”.

Ms. Selkoe responded to Ms. Sticklor’s comments, as follows: With respect to Condition 5, Ms. Selkoe did not object to the requested change. With respect to Condition 6, Ms. Selkoe did not object to the requested change related to timing (i.e., prior to issuance of a certificate of occupancy rather than a building permit) but did not think it was necessary to add language regarding implementation of the plan since the obligation was limited to submission only. After discussion by the Board indicating that Condition 6 did not include an obligation to implement any plan, Ms. Sticklor concurred that such language would not be included. With respect to Condition 8, Ms. Selkoe indicated that the goal should be to make the facility available on not less than 6 calendar days. After discussion by the Board indicating that the phrase “5 to 6” was ambiguous as a goal, Ms. Sticklor concurred with the phrase “on not less than 6 days per calendar year.”

Testimony was then closed and the Board deliberated. In the deliberations of the Board, Ms. Schneider noted that the Project was thoughtfully designed, particularly with respect to its residential character and buffer along Dummer Street and its urban character and plaza along Commonwealth Avenue. Ms. Schneider noted, since dimensional relief was available for an educational use under Section 5.08(2), that relief should be granted under that Section rather than under Sections Section 5.31 or 5.43, and Mr. Hussey and Chairman Zuroff concurred with Ms. Schneider. Chairman Zuroff added that the entire Project was a counter balancing amenity, was well thought out and justified under the Zoning By-Law.

Chairman Zuroff stated that the Board, having considered the foregoing information, having reviewed the plans and the relief required, fully supports the Project, and approves the Project subject to the conditions set out below.

With respect to Footnote 12 of Table 5.01, the Board finds that this Footnote is of no force and effect since it is not referenced in Table 5.01 itself.

With respect to the required special permits under Section 5.08(2), Section 5.09(2)(h), Section 6.02(4)(c) and Section 6.06(7), the Board makes the findings pursuant to Section 9.05 and other relevant provisions of the Zoning By-Law for the reasons stated by Ms. Sticklor and other representatives of the Petitioner in their presentations. Specifically:

1. The Property is an appropriate location for the Project.

The Property is located in a general business zoning district. The Project's education use is permitted as-of-right and dimensions are all permitted under the Zoning By-Law either as-of-right or by special permit. The Project's uses and dimensions are similar to and compatible with the Property's neighboring uses along Commonwealth Avenue. Moreover, the Project will provide landscaped areas along Essex and Dummer Streets, which is the portion of the Property closest to the S-7 (Single Family) Zoning District. The Property is located at the center of the University's main campus across from the College of Fine Arts and is well-served by public transportation.

2. The Project will not adversely affect the neighborhood.

The Project will improve the neighborhood by activating the streetscape and the neighborhood. Moreover, the Project will provide fully landscaped buffer areas along Essex and Dummer Streets and install a landscaped plaza fronting on Commonwealth Avenue.

3. There will be no nuisance or serious hazard to vehicles or pedestrians.

The Project will include adequate off-street parking, with a safe means of ingress and egress, so that the surrounding streets will be unaffected and unobstructed. Traffic impacts will be mitigated through a transportation demand management plan and construction impacts will be

mitigated through a construction management plan. The Project will be designed and operated to comply with all state and local noise ordinances.

4. Adequate and appropriate facilities will be provided for the proper operation of the Project.

The Project will be provided with parking, sanitary, life safety and other facilities of high-quality in compliance with applicable building and health codes. The Project's parking spaces will be operated as part of BU's parking and transportation system and will be available to BU students, faculty, staff and visitors/guests visiting the Project. Annual parking fees for faculty, staff and students are designed to discourage automobile usage; occupancy of the parking lots is monitored, restricting use to vehicles with parking stickers and authorized visitors. Additionally, the performances at the Project typically occur outside of peak parking periods.

5. The Project will not have a significant adverse effect on the supply of housing available for low and moderate income people.

The Property's current and proposed use is educational in nature. The Project, therefore, will have no effect on the supply of housing available for low and moderate income people.

6. Additional conditions and reasons relating to Community Impact and Design Review.

The Project meets the community impact and design review standards set forth in **Section 5.09(4)** of the Zoning By-Law. Specifically, as noted in the Project's Impact Statement, the Project's design incorporates each of **Section 5.09(4)**'s standards regarding the preservation of trees and landscape, the relation of buildings to the environment, relation of buildings to the form of the streetscape and neighborhood, open space, circulation, stormwater drainage, utility service, advertising features, safety and security, heritage, microclimate, energy efficiency and consideration of the "Commonwealth Avenue Design Guidelines."

7. Additional conditions and reasons related to exceptions to dimensional requirements for height, rear yard and height of rooftop structures.

The dimensional modifications granted are to the extent necessary to allow reasonable development of the educational use and are in general harmony with other uses permitted and as regulated in the vicinity.

With respect to allowance of increased height, the increase in height is located away from the residential neighborhood on Dummer Street. With respect to the modification of the rear yard requirement, the Project will provide fully landscaped buffer areas along Essex and Dummer Streets and install a landscaped plaza fronting on Commonwealth Avenue which will (i) off-set any reduction in the depth or area of any required yard or setback by an increase in the depth or area of another yard or setback; and (ii) provide public benefits not otherwise required that more than compensate for any yard or setback reduction.

With respect to the increase in height of the rooftop structures, the Project's rooftop mechanicals will be screened/concealed from public view to the greatest extent feasible. The design minimizes the height of the rooftop structures, such that only the elevator penthouse is more than 10 feet above the height limit, which is the minimum height necessary to service the Project's uses.

8. Additional conditions and reasons related to modification of parking requirement.

The modifications to the parking requirements granted are to the extent necessary to allow reasonable development of the educational use and are in general harmony with other uses permitted and as regulated in the vicinity. The Project's parking spaces will be operated as part of BU's parking and transportation system and will be available to BU students, faculty, staff and visitors/guests visiting the Project. Annual parking fees for faculty, staff and students are designed to discourage automobile usage; occupancy of the parking lots is monitored, restricting use to

vehicles with parking stickers and authorized visitors. Additionally, the performances at the Project typically occur outside of peak parking periods.

9. Additional conditions and reasons related to loading requirements.

The Property will include two loading bays in the New Building. Given nature of the educational use, the deliveries are very limited and the two bays will sufficiently accommodate the anticipated demand.

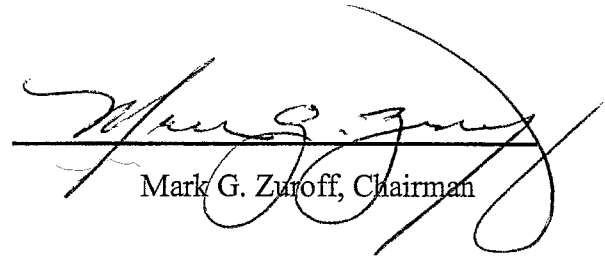
Therefore, the Board voted unanimously to grant the requested special permits under Section 5.08(2), Section 5.09, Section 6.02(4)(c) and Section 6.06(7) of the Zoning By-Law, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, including the parking lay-out and location of all utilities, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations, including rooftop structures and screening, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping and fencing plan, subject to the review and approval of the Assistant Director of Regulatory Planning. The applicant shall also submit a plan for replacement of street trees on Dummer Street down to Amory Street, subject to the review and approval of the Tree Warden and the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, the applicant shall submit a final Construction Management Plan, including access and parking of construction vehicles, a dust and rodent control plan, waste disposal, and details regarding demolition, subject to the review and approval of the Building Commissioner and Director of Transportation and Engineering, with a copy to the Planning and Building Departments.
5. Prior to the issuance of a certificate of occupancy, the applicant shall submit a final Transportation Demand Management Plan, subject to the review and approval of the Director of Transportation and Engineering, with a copy to the Planning and Building Departments.
6. Prior to the issuance of a certificate of occupancy, the applicant shall submit a plan for a bike path or track on Essex Street as well as Dummer Street, if feasible, subject to the review and approval of the Director of Transportation and Engineering.

7. Prior to the issuance of a building permit, the applicant shall submit a final Drainage and Stormwater Plan, subject to the review and approval of the Director of Transportation and Engineering.
8. Prior to the issuance of a certificate of occupancy, the applicant, as an amenity to the Town, shall submit a plan outlining a set of proposed community partnership initiatives for Brookline community and local artists groups, including use of the theater and supporting facilities when it is not in use by the applicant, with the goal of making such facilities available to the Brookline community and local artists groups on not less than 6 days per calendar year, subject to the approval of the Assistant Director of Planning.
9. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:
1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
the Board of Appeals

Filing Date: _____



Mark G. Zuroff, Chairman

A True Copy

ATTEST:

Patrick J. Ward
Clerk, Board of Appeals